IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2875 OF 2004

IN

SUIT NO.1071 OF 2005

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Swapna Sadan Co.op.Hsg.
Society Ltd. ...Plaintiff

v/s.

Dinyar B. Tangri & Ors. ...Defendants

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Mr.M.P.Vashi for the Plaintiff.

Mr.M.S. Singhvi i/b M/s.Gagrat & Co. for the Defendant No.1.

Mr.V.F.Singh for Defendant Nos. 2 to 4.

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CORAM: D.K.DESHMUKH, J.

DATED: 20TH JANUARY,2006

P.C.:

1. This Notice of Motion is taken out by the Plaintiff praying for interim orders in terms of prayer clauses (a), (b) and (c) as against the Defendant No.1. Interim order in terms of prayer clause (d) is sought against the Defendant No.1 as also against the Defendants Nos. 2 to 4.

2. After having heard the learned Counsel for the parties and after having gone through the record, in my opinion, for the purpose of deciding this Notice of Motion following can be taken as established position:-

(i) that a building having five floors and a bungalow occupied by Defendant No.1 having ground + first floor are constructed on the plot and that there is no sub-division of the plot;

(ii) that the bungalow which is occupied by Defendant No.1 is connected to the building which has the flats;

(iii) that the Defendants Nos. 2 to 4 are the developers, who are holding some shops on the ground floor of the building. Which they have leased out. That the Corporation is serving separate bills for property taxes on the Defendant No.1 and the Defendants Nos. 2 to 4.

3. The learned Counsel appearing for the Defendant No.5/Municipal Corporation states that subject to any policy changes which the Corporation may introduce, the Corporation will serve the demand for property taxes and other taxes in relation to the building constructed on the plot on the Plaintiff/society.

4. The learned Counsel appearing for the Defendants Nos. 2 to 4 stated before me that as the bills for property taxes for the shops were separately served by the Corporation on the Defendants Nos. 2 to 4, they were making payment directly to the Corporation. If now the Corporation is going to demand the property taxes from the society, on the society serving on the Defendants Nos. 2 to 4 a demand for property taxes and other society charges, subject to the right of the Defendant No. 2 to 4 to challenge

their liability to pay the society charges, Defendants Nos. 2 to 4 shall pay their share of property taxes and society charges to the society promptly on demand being made by the Plaintiff/society. Therefore, in view of this statement made by the learned Counsel for Defendants Nos. 2 to 4 it is not necessary to make any interim order in terms of prayer clause (d) as against Defendants Nos. 2 to 4. It is clarified that the society can demand property taxes and society charges pursuant to this order from the Defendants Nos. 2 to 4 for the period from the month of April, 2006.

. So far as Defendant No.1 is concerned, the Defendant No.1 is occupying the structure constructed on the same plot, in my opinion, therefore, the Corporation would be justified in serving bills of property taxes in relation to the structure on the plaintiff/society, as the plot on which the structure stands is not sub-divided and the structure which is occupied by Defendant No.1 is connected to the building which is having flats.

5. In this view of the matter, therefore, in my opinion, the Plaintiff is entitled to interim order

in terms of prayer clause (d) as against the Defendant No.1. Accordingly, interim order in terms of prayer clause (d) is granted as against the Defendant No.1 only. It is clarified that in relation to Defendant No.1 also the Plaintiff/society shall claim property taxes and society charges for the period subsequent to April, 2006.

6. So far as interim order claimed by prayers (a) to (c) are concerned, as it is an admitted position that the Corporation has not permitted sub-division of the plot, in terms of the provisions of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act, 1963 members of the society are entitled to be co-owners of the plot with the Defendant No.1, who is the owner of the plot. So long as the plot is not sub-divided and the land on which the Defendant No.1 has constructed his bungalow is not separately demarcated by the Corporation and recognised as separate plot, Defendant No.1 cannot claim to use any portion of the open land of the plot exclusively to the exclusion of the other co-owners of the land. The compulsory open space belongs to all the persons who are occupying the flats in the building as also the Defendant No.1.

7. In this view of the matter, therefore, in my opinion, the Plaintiff is entitled to interim order in terms of prayer clauses (a), (b) & (c). It is accordingly so ordered.

8. It is clarified that if the society is entitled to claim recovery of any charges from the Defendants Nos. 1 to 5 for any period before April, 2006, the society is free to adopt appropriate remedy.

9. At this stage a request is made on behalf of the Defendant No.1 for stay of the operation of the order. In my opinion, the request is not proper. Request is rejected.

Notice of Motion disposed of.

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